

STATE OF IOWA
PROPERTY ASSESSMENT APPEAL BOARD

Gang Gu & Wenxin Liu,
Appellants,

v.

Polk County Board of Review,
Appellee.

ORDER

Docket No. 14-77-0059
Parcel No. 320/03913-293-001

On January 7, 2015, the above-captioned appeal came on for hearing before the Property Assessment Appeal Board. The appeal was conducted under Iowa Code section 441.37A(2) and Iowa Administrative Code rules 701-71.21(1) et al. Wenxin Liu represented herself and Gang Gu. Assistant Polk County Attorney Ralph Marasco, Jr. is counsel for the Board of Review. The Appeal Board having reviewed the record, heard the testimony, and being fully advised finds:

Findings of Fact

Gang Gu and Wenxin Liu are the owners of a residentially classified property located at 4929 Cherrywood Place, West Des Moines, Iowa. It is a two-story home built in 2001 with 2942 square feet of living area and a full, walkout basement with 1000 square feet of average-plus finish. It has a three-car attached garage, a deck, and a patio.

Gu and Liu protested to the Board of Review regarding the 2014 assessment and claimed there has been a downward change in value since the last assessment. Iowa Code §§ 441.35(2); 441.37(1)(a)(2) (2014). The 2014 assessment was \$518,200, allocated as \$118,600 in land value and \$399,600 in improvement value. The Board of Review acted on a recommendation from the Assessor's office to lower the assessment. It thus granted the petition, in part, and reduced the value to

\$483,300, allocated as \$118,600 in land value and \$364,700 in improvement value. Gu and Liu then appealed to this Board.

Attached to their appeal to this Board, Gu and Liu submitted three comparable properties they assert have lower assessed land values than their property. Because they do not have a claim of inequity, we will not dwell on their assertion the land values are inequitable. However, we note that while all three properties neighbor the subject property, they all back to South 50th Street, which the Assessor's office identified as major thoroughfare. (Exhibit 4). For this reason, these sites received a discount to reflect their location and its impact on value. The subject site, which does not back directly to South 50th Street, does not have this discount.

In Liu's opinion, the sale of the subject property was an arm's length transaction and the assessed value should be the sale price or the appraised value. They submitted an appraisal to the Board of Review with their protest. The appraisal was completed by Shannon Hayes of Rally Appraisal, LLC, West Des Moines, Iowa. Hayes developed the sales comparison and cost approach to determine a final opinion of the fair market value of \$478,000, as of May 2013.

Gu and Liu purchased the subject property from Wiederstein Capital, LLC on July 1, 2013, for \$460,000. The property record card indicates the subject was sold at a sheriff's sale in October 2012, and was subject to multiple transfers involving financial institutions prior to Gu and Liu's purchase. Further, Hayes states that "[s]ales data strongly indicates that the subject would need to be much smaller, no basement finish, smaller lot and deferred condition to be valued lower and clos[er] to selling price. Subject appears to have been priced to lower marketing time. NO data was found to support lower selling price in immediate area."

Amy Rasmussen, Director of Litigation in the Polk County Assessor's office, testified for the Board of Review. Rasmussen testified that the subject property had been in foreclosure prior to the July 2013 purchase by Gang and Liu. However, in her research she noted the prior titleholder, WB

Holdings, LLC, appeared to have a business relationship with Weiderstein Capital. In her opinion, the sale does not reflect market value. We agree.

Further, Rasmussen was critical of the appraisal and noted that sale #1 (1140 Tulip Tree Lane) was a relocation sale which may have affected the sale price. Further, Sale #3 (4815 Park Circle) was a foreclosure sale, which was not reported or adjusted by Hayes. We note that Sale #4 (6440 Pommel Place) is located nearly three miles from the subject property and is a new, one-story home compared to the subject being a twelve-year old, two-story home. Its selling price is much less than the other more proximate sales Hayes included in his report. This leads us to believe it may be inferior in location and this fact should have been considered by Hayes. In Rasmussen's opinion, Sale #2 (4950 Cherrywood Place) is the best comparable in the appraisal report. We note, after adjustments, it indicates a value of \$487,500, which supports the assessed value.

The Board of Review relied on three comparable properties from the Assessor's office, which it adjusted for differences. The three sales had indicated values of roughly \$426,000 to \$497,000.

Conclusion of Law

The Appeal Board has jurisdiction of this matter under Iowa Code sections 421.1A and 441.37A. This Board is an agency and the provisions of the Administrative Procedure Act apply. Iowa Code § 17A.2(1). This appeal is a contested case. § 441.37A(1)(b). The Appeal Board determines anew all questions arising before the Board of Review, but considers only those grounds presented to or considered by the Board of Review. §§ 441.37A(3)(a); 441.37A(1)(b). New or additional evidence may be introduced. *Id.* The Appeal Board considers the record as a whole and all of the evidence regardless of who introduced it. § 441.37A(3)(a); *see also Hy-vee, Inc. v. Employment Appeal Bd.*, 710 N.W.2d 1, 3 (Iowa 2005). There is no presumption the assessed value is correct.

§ 441.37A(3)(a). However, the taxpayer has the burden of proof. § 441.21(3). This burden may be shifted; but even if it is not, the taxpayer may still prevail based on a preponderance of the evidence. *Id.*; *Richards v. Hardin County Bd. of Review*, 393 N.W.2d 148, 151 (Iowa 1986).

In Iowa, property is to be valued at its actual value. Iowa Code § 441.21(1)(a). Actual value is the property's fair and reasonable market value. § 441.21(1)(b). Market value essentially is defined as the value established in an arm's-length sale of the property. *Id.* Sale prices of the property or comparable properties in normal transactions are to be considered in arriving at market value. § 441.21(1)(b). Conversely, sales of property in abnormal transactions not reflecting market value shall not be taken into account. *Id.*

“For even-numbered assessment years, when the property has not been reassessed” a taxpayer may challenge its assessment on the basis that there has been a change in value from the immediately preceding assessment year. Iowa Code § 441.37(1)(a)(2); *Equitable Life Ins. Co. v. Bd. of Review of Des Moines*, 252 N.W.2d 449 (Iowa 1977). “When this ground is relied upon, the protesting party shall show the decrease in value by comparing the market value of the property as of January 1 of the current assessment year and the actual value of the property for the previous assessment year.” *Id.*; *see also Equitable Life Ins. Co.*, 252 N.W.2d at 450 (holding for a taxpayer to be successful in its claim of change in value, the taxpayer must show a change in value from one year to the next; the beginning and final valuation). The assessed valuation cannot be used to establish the beginning valuation. *Id.* at 450. Essentially, it is not enough for a taxpayer to prove the last regular assessment was wrong; such a showing would be sufficient only in a year of regular assessment. *Id.* at 451.

Gu and Liu did not submit any evidence to establish the subject property's actual value on January 1, 2013, to demonstrate the property has suffered a downward change in value. On this basis alone, they did not sustain their burden of proof.

In addition, we conclude the evidence is also insufficient to show the property's value as of January 1, 2014. Gu and Liu assert the fair market value of the subject property as of January 1, 2014 is either: 1) the purchase price of \$460,000 or 2) the appraised value of \$478,000. While the purchase price of the property may be an indication of market value, we do not find it alone is sufficient to conclusively determine the fair market value. *Riley v. Iowa City Bd. of Review*, 549 N.W.2d 289 (Iowa 1996). Further, the evidence demonstrates the property was sold from an investment company, priced and sold below-market, and we find the sale was abnormal. § 441.21(1)(b) ("In arriving at market value, sales prices of property in abnormal transactions not reflecting market value shall not be taken into account, or shall be adjusted to eliminate the effect of factors which distort market value, including . . . foreclosure or other forced sales.").

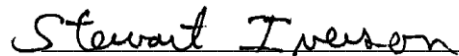
The Hayes appraisal offers an opinion of the fair market value; however, we find flaws with the appraisal that impact its reliability. Turning to the sales comparison analyses, Hayes used two sales that we find are not reflective of arm's-length transactions and were not adjusted to account for this impact. His remaining two sales appear to be normal transactions; however, we find Sale #4 (6440 Pommel Place) is not comparable to the subject or, at a minimum, requires additional adjustments for location differences. The remaining sale in Hayes report, 4950 Cherrywood Place, is located in the same cul-de-sac as the subject property and, after adjustments, supports the assessed value. Ultimately, we do not find the appraisal as a whole to be persuasive evidence of the subject property's fair market value.

Based on the foregoing, we find Gu and Liu have not shown the subject property suffered a downward change in value from January 1, 2013, to January 1, 2014. THE APPEAL BOARD ORDERS the 2014 assessment of Gang Gu and Wenxin Liu's property located at 4929 Cherrywood Place, West Des Moines, Iowa, set by the Polk County Board of Review, is affirmed.

Dated this 2nd day of February, 2015.



Karen Oberman, Presiding Officer



Stewart Iverson, Board Chair

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